90-216

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

Walter J. Moeller, Pro Per

Petitioner

v.

United States Government, et al

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Walter J. Moeller, Pro Per
Route 2, Box 299-F
West Fork, AR 72774
(501) 839-2484

QUESTIONS PRESENTED

1. WHETHER MY AMENDED COMPLAINT IS IN COMPLIANCE WITH RULE 8 AND 9 FRCP.

2. WHETHER FINES ASSESSED BY THE DISTRICT COURT AND THE APPEALS COURT ARE JUSTIFIED.

3. WHETHER JUDGE WATERS SHOULD HAVE RECUSED HIMSELF BECAUSE OF HIS BIAS AND PREJUDICE.

4. WHETHER IRS AGENTS ARE IMMUNE FROM SUIT IN THEIR PERSONS WHEN THEY DEPRIVE A TAXPAYER OF HIS STATUTORY AND CONSTITUTIONAL RIGHTS.

5. WHETHER TITLE 26 U.S.C. SECTION 7422 PROVIDES A REMEDY FOR TAXPAYER TO RECOVER TAXES WHICH HAVE BEEN ILLEGALLY ASSESSED AND COLLECTED.

6. WHETHER EACH TAX YEAR IS A SEPARATE CAUSE OF ACTION.

LIST OF PARTIES

The parties listed below are in addition to the parties listed on the cover sheet.

JAMES WESTBROOK, Individually and in his capacity as a public servant employee of the IRS.

and

WILLIAM F. BARLOW, Individually and in his capacity as a public servant employee of the IRS.

and

GUS MCCLANAHAN, Individually and in his capacity as a public servant employee of the IRS.

and

UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE INTERNAL REVENUE SERVICE, et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service.

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CASES:

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The order and opinion of the Eighth Circuit Court of Appeals on which this petition is based, was decided on May 11, 1990. (See appendix Exhibit A at page 1). The orders of the District Court are not reported but are contained verbatim in the Appendix (see appendix Exhibit B,C and D at pages 4,5, and 7 respectively).

JURISDICTION

The judgment of the U.S. Court of Appeals for the Eighth Circuit was entered on May 11, 1990. This court has jurisdiction to review the judgment of the Court of Appeals and the orders and memorandum opinions of the U.S. District Court by writ of certiorari under the provisions of the U.S. Constitution and Title 28 U.S.C. §1254(1) (1988).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(The titles only are listed below. The complete text or the pertinent parts thereof are contained in the appendix at the pages indicated).

U.S. CONSTITUTION

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AMENDMENT X
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TITLE 18 U.S.C. § 4
(Appendix Page 93)

TITLE 18 U.S.C. § 241
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TITLE 42 U.S.C. § 1986
(Appendix Page 114)

STATEMENT OF THE CASE

This petition arises from the order and opinion of the Eighth Circuit Court of Appeals dated May 11, 1990 affirming the order and memorandum opinion of the U.S. District Court dated August 18, 1989 dismissing my complaints Civ. No. 89-5039 and Civ. No. 89-5949 to recover money unlawfully assessed and seized by IRS officials.

Recovery is authorized by Title 26 U.S.C. §7422.

The jurisdiction of the U.S. District Court arises under the Constitution of the United States, Article III § 2, Amendments I, IV, V, VI, VII, VIII, IX and X, Title 26 U.S.C. §§ 7422 and 7804, Title 28, U.S.C. §§ 1331, 1340, 1343 and 1346, Title 42 U.S.C. §§ 1985 and 1986.

The Jurisdiction of the appeals court arises under the provisions of the U.S.

Constitution as set forth above and under the provisions of Title 28 U.S.C. Rule 3 and 4 FRAP and §1291 and 1294(1).

This petition for certiorari is the third time I have appealed to the U.S. Supreme Court for justice. For five years in a row, 1979, 1980, 1981, 1982 and 1983, public servant employees of the IRS unlawfully assessed and collected money that I did not owe in violation of Title 26 U.S.C. §7214, Title 28 U.S.C. § 2679, Federal tax regulations §§ 301.6203-1 and 601.102-106 and Title 42 U.S.C. §§ 1985 and 1986 as well as sections under Title 18 U.S.C.

All of my attempts to recover my money as provided for by Title 26 U.S.C. §7422 have been frustrated by a biased and prejudiced judge who has made false accusations against me, falsified the court record and deprived me of my statutory and constitutional rights. At no time have I ever been permitted to appear in court to

refute the judge's false statements or to plead my case.

On December 27, 1984, I filed a complaint in the U.S. District Court to recover taxes unlawfully assessed and collected for the tax year 1979. This complaint was summarily dismissed with prejudice, without a hearing, by the court order and memorandum opinion dated January 3, 1985. The order and memorandum opinion is included in the appendix Exhibit E at page 28.

In this order Judge Waters falsely accused me of being a "tax protester" and made a false statement as follows:

> . . It is apparent that the plaintiff complains about the validity of certain assessments which have been made against him and the attempts by the Internal Revenue Service to collect the taxes which it, through its commissioner and other employees, claim are due.

Contrary to this false statement made by Judge Waters, the taxes unlawfully assessed had been paid in full and all

conditions precedent had been complied with, including a demand for refund, before I filed my complaint for refund in the U.S. District Court. This false statement was the basis for the dismissal of my cause for lack of Jurisdiction.

As a result of this unlawful falsification of the records, I filed a felony report against Judge Waters as required of me by Title 18 U.S.C. §4. Copies of the report with supporting documents were forwarded to President Reagan, Chief Justice Berger, Attorney Meese, numerous Senators and Representatives and to members of the Judicial Ethics Committee. Apparently no action was taken on my complaint.

On July 14, 1987 I filed a complaint in the U.S. District Court against the U.S. Government and certain public servant employees of the Internal Revenue Service to recover money that had been unlawfully assessed and collected for the years 1980

and 1981. All conditions precedent were complied with. All the money illegally assessed was collected by lien and levy. A proper demand for refund was made, all within the time frame authorized by law.

In the complaint I alleged that the public servant employees of the Internal Revenue Service totally disregarded the audit and administrative procedures mandated by the IRS regulations and that the public servant employees of the IRS engaged in a criminal conspiracy to deprive me of my property for taxes that I did not owe and deprived me of my constitutional rights of due process, all under color of law.

On July 21, 1987, the District Court, sua sponte, dismissed with prejudice all the named individuals in my complaint and all the issues pertaining thereto without hearing or receiving any evidence. A copy of this order is included in the appendix Exhibit I at page 37.

I made a timely appeal of this order to the U.S. Court of Appeals.

This appeal was docketed in the appeals court as Appeal #87-2141WA dated August 21, 1987. The appeal was dismissed for lack of jurisdiction by order dated September 22, 1988. (See appendix Exhibit N at page 58). My request for rehearing was rejected by court order dated November 2, 1988. (See appendix Exhibit O at page 61).

On September 1, 1987 I filed a motion in the U.S. District Court under the provisions of Title 28 U.S.C.§ 144 and 455 to disqualify Judge H. Franklin Waters because of his bias and prejudice against all pro se and pro per plaintiffs and because he falsely accused me of being a "Tax Protester," because of the false statement he made in his order of January 3, 1985 and because of favoritism towards the U.S. Government and government employees.

On February 19, 1988 the District Court, (Judge H. Franklin Waters) issued an order and memorandum opinion (see Appendix Exhibit L at page 46). in which my motion to disqualify Judge Waters was denied. The order further stated that the court order of July 21, 1987 dismissing with prejudice the individuals listed in my complaint was not a final order. The court further ordered me to amend my complaint so as to eliminate all the individuals dismissed with prejudice in the July 21, 1987 order and all the causes connected thereto. The order of July 21, 1987 was on appeal and docketed in the Appeals Court at that time as Appeal #87-2141WA.

When I objected to this order, Judge Waters dismissed my entire complaint with prejudice by his order of March 28, 1988. (See appendix Exhibit M at page 55).

My complaint for the recovery of money unlawfully assessed and seized was authorized under the provisions of Title 26

U.S.C. § 7422 against the U.S. Government. My complaint against the IRS officials was authorized under Title U.S.C. § 7214, Title 28 U.S.C. § 2679 and Title 42 U.S.C. §§ 1985 and 1986.

The Appeals Court sustained the District Court's order by order dated February 1, 1989. (See appendix Exhibit P at page 62). My petition for rehearing and suggestion for rehearing en banc was denied by order dated March 17, 1989. (See appendix Exhibit Q at page 69).

My petition for writ of Certiorari to the Supreme Court was denied by order dated October 2, 1989.

On April 19, 1989, I filed a complaint Case #89-5039 to recover taxes unlawfully assessed and seized for the tax year 1982 as authorized and in accordance with the provisions of Title 26 U.S.C. § 7422. All the conditions precedent required by this statute were fully complied with.

On May 5, 1989, I filed a complaint as case #89-5049 to recover taxes unlawfully assessed and collected for the tax year 1983, as authorized and in accordance with the provisions of Title 26 U.S.C. § 7422. All the conditions precedent required by this statute were fully complied with. I relied on the Supreme Court decision in Commissioner v. Sunnen, 333 US 591 (8Cir. 1948), and Rule 42(b) that each tax year is a separate cause of action.

At no time were my records ever examined for the tax years 1982 or 1983. The IRS agents completely ignored Federal tax regulations for conducting an audit. I was never given a copy of the audit report. I did not receive the so called "30-day letter" required by law to accompany the audit report which sets forth the administrative appeals procedure. Thus I was denied my administrative appeal rights as specified in the Federal tax regulations and my constitutional rights of

due process (Amendment V).

I was notified that an additional assessment had been made against my 1982 and 1983 tax return when I received a letter "Notice of Deficiency" (90-day letter), dated August 9, 1985. The IRS agents completely ignored their tax regulations for conducting an audit and went directly into the collection phase without examining my books or records.

On May 16, 1989, the District Court issued an order consolidating the two complaints. (See appendix Exhibit B at page 4). This order was appealed on July 3, 1989 on the basis that each tax year is a separate and distinct cause of action and the order deprived me of a protected right. This appeal #89-2107 was dismissed for lack of jurisdiction by order of the appeals court dated August 18, 1989.

The Government filed a motion to strike on case #89-5039 dated June 30, 1989. As a result of this motion, I was directed by

district court order dated July 3, 1989 and filed for record on July 5, 1989, to amend my complaint #89-5039 by July 14, 1989 so as to comply with Rule 8 FRCP. (See appendix Exhibit C at page 5). Please note that this order pertained only to Civ. No. 89-5039. A copy of this order was not mailed to me as required by law. As noted above, I filed a notice of appeal on July 3, 1989, the same date as Judge Waters' order. On Friday July 7, 1989, I received a copy of the letter addressed to the appeals court dated July 5, 1989 conveying to the appeals court copies of my Notice of Appeal and the docket sheets for Civ. #89-5039 and Civ. #89-5049. I noted on the docket sheet as item 12 for Civ. #89-5039 that the court had issued an order directing me to amend my complaint #89-5039 by July 14, 1989. When I did not receive a copy of this order in the mail on Monday July 10, 1989, I called the court clerk of the U.S. District Court and informed the

clerk that I had not received a copy of the order. I then proceeded to drive 22 miles into Fayetteville to obtain a copy of the order from the court clerk. The clerk could not find a copy of the order in the office file and had to go to the Judge's file to obtain a copy. I asked the clerk for an extension of time to amend my complaint due to the fact that I had not received a copy of the court order as required by law. The clerk assured me that under the circumstances an order would be issued granting me an extension of time. I started immediately revising Civ. #89-5039 so as to comply with the court order. When I did not receive the promised extension of time on July 12, 1989, I worked all that day and night and completed and filed my amended complaint on July 13, 1989. I did not receive a copy of the district court order in the mail. Please note that Judge Waters' order of July 3 referred only to complaint #89-5039.

On August 18, 1989 Judge Waters issued an order and memorandum opinion dismissing both of my complaints, (No. 89-5039 and 89-5949) with prejudice. (See appendix Exhibit D at page 7). In his order and memorandum opinion, Judge Waters erred when he stated that my complaint was filed with redundant, immaterial, impertinent and scandalous matter. Judge Waters also stated that my amended complaint did not come close to compliance with the court's order and Rule 8(a) Federal Rules of Civil Procedure. The court then imposed a fine on me in the amount of $2500.00 and ordered the court clerk to refuse to accept any further filings from me. A notice of appeal from the district court order was timely filed on October 10, 1989 in accordance with Rule 1 U.S. Court of Appeals for the 8th. Circuit and Rule 3 and 4 of the Federal Rules of Appellate Procedure as authorized by Title 28 U.S.C. §1291.

The 8th. Circuit Court of Appeals affirmed the order of the District Court by court order dated May 11, 1990. The appeals court further imposed a fine of $1500.00 for filing a frivolous appeal.

ARGUMENT

I

All of my complaints, appeals and petitions for writ of certiorari are based upon statutory law, the Constitution and Supreme Court opinions which I relied on as being the law of the land.

MY AMENDED COMPLAINT WAS IN STRICT COMPLIANCE WITH RULE 8 AND 9, FRCP.

In his order dated July 3, 1989 Judge Waters stated: (see appendix Exhibit C at page 5).

> "The court finds that said motion should be and it is hereby granted for the reasons that the complaint filed by plaintiff is replete with redundant, immaterial, impertinent and scandalous matter."

This statement made by H. Franklin Waters is in error. Neither my original complaint nor my amended complaint was

"replete" with the alleged "matter."

My amended complaint was in strict compliance with Rule 8 FRCP and with Rule 9 FRCP. Rule 9 requires more specific allegations where fraud, mistakes or conditions of the mind are involved. My complaint was a concise statement of facts as to what each defendant did to me, how they did it and how the illegal acts of each defendant deprived me of my statutory and constitutional rights as required by Rule 9 FRCP.

If in fact my complaint contained redundant, immaterial, impertinent and scandalous matter as alleged by Judge Waters, why didn't H. Franklin Waters include this allegation in his earlier order dated May 15, 1989 in which he consolidated my two complaints Civ. No. 89-5049 and 89-5939? How is it possible to eliminate something from my complaint that is non-existant?

The only evidence I have to support my

contention that my amended complaint meets the requirements of Rule 8 and 9 FRCP is the complaint itself. It is requested that this court read my complaint that is included in the appendix as Exhibit R at page 70.

Even more significant is the question: Why did H. Franklin Waters refuse to mail me a copy of his order of July 3 1989? Was it mere coincidence that Judge Waters' order of July 3rd was issued on the same date as my notice of appeal?

On July 3, 1989 I filed a notice of appeal of the court order dated May 15, 1989 consolidating my two complaints for separate tax years, relying upon the Supreme Court case Commissioner of IRS v. Sunnen, 333 U.S. 591, 593 (8th.Cir. 1948) which states that each tax year is a separate cause of action. When I received the court clerk's letter dated July 5, 1989 transmitting my notice of appeal to the court of appeals, I noticed on the docket

sheet, as the last entry, item # 12, the court had issued an order directing me to amend my complaint Civ. No. 89-5039. (See appendix Exhibit C at page 5). I received this letter on Friday July 7, 1989. When I did not receive a copy of the court order on Monday July 10, 1989 I called the court clerk and was informed that I could obtain a copy at the clerk's office. I then proceeded to drive 22 miles into town to pick up a copy of the court order. The court clerk was unable to locate a copy of the order in the office files and appeared reluctant to provide me with a copy. When I insisted that I be supplied with a copy of the order, one of the clerks obtained a copy from the judge's file. This was approximately 3:00 p.m. on July 10, 1989. Needless to say, I was extremely pressed for time to amend my complaint.

At the time I picked up the copy of the order, the court clerk assured me that under the circumstances, an extension of

time would be granted. However, this extension was not forthcoming and I worked night and day in order to meet the July 14, 1989 deadline for amending my complaint. I filed my amended complaint on July 13, 1989.

I did not receive a copy of the court order in the mail. The court will please note that I have lived at the present address for over 29 years. All of the rural mail carriers know me and I have never failed to receive mail addressed to me. My past experience with Judge Waters leads me to believe that the order was deliberately withheld with the intent to dismiss my appeal. The court's attention is further directed to the fact that the court order dated July 3, 1989 pertained only to Civ. No. 89-5039 and no other. This fact is admitted by Judge Waters in his order and memorandum opinion dated August 18, 1989 in which both of my cases, 89-5039 and 89-5949 were dismissed with

prejudice. (See appendix Exhibit D at page 7).

II

THE IMPOSITION OF FINES ON ME BY THE DISTRICT COURT AND THE APPEALS COURT WAS COMPLETELY UNJUSTIFIED.

The district court imposed a fine on me in the amount of $2500.00 and directed the court clerk to refuse to accept any other lawsuits or pleadings from me.

This action on the part of Judge Waters is completely unjustified. The order deprives me of my First Amendment rights to petition my government for redress of grievances in the future no matter how justified the cause. I was denied a hearing which deprived of my constitutional right under the Fifth amendment of due process.

The appeals court in its order filed May 11, 1990 (see appendix Exhibit A at page 1) affirmed the district court order dated August 18, 1989 and levied a fine on me of $1500.00 alleging that my appeal was

frivolous.

The arbitrary dismissal of my complaints by the district court and affirmed by the court of appeals is in direct conflict with the Supreme Court decisions in the cases of Conely v. Gibson, 355 US 41 (1957) and Scheuer v. Rhodes, 416 US 232 (1974).

Imposing sanctions as provided for under Rule 11 FRCP is normally imposed after trial and must be comported with due process requirements.

Any semblance of due process in my case was completely lacking. I have never been permitted to appear in court to present my case.

The district court and the court of appeals have adapted the perverted concept of punishing the victim rather than the criminal. Denial of due process is in direct conflict with the Supreme court opinion in Powell v. Alabama, 287 US 68 (1932), Conely v. Gibson, 355 US 41, 48

(1957), Scheurer v. Rhodes, 416 US 232 (1974), and Emerick v. Fenick Industries, Inc., 539 F 2d 1379, (1976) and cases cited therein.

III

A BIASED AND PREJUDICED JUDGE SHOULD RECUSE HIMSELF IN ACCORDANCE WITH TITLE 28 U.S.C. SECTIONS 144, 453 AND 455.

Judge Waters has expressed his bias and prejudice against me personally and all pro se and pro per plaintiffs. I have made a concerted effort to find a single case where Judge Waters has ever permitted a non lawyer pro se or pro per plaintiff to present a case in his court. I have not found even one such case.

In his order and memorandum opinion dated January 3, 1985, (see appendix Exhibit P at page 28), Judge Waters falsely accused me of being a "tax protester." He then proceeded to falsify the court record by inserting into his order a false statement that my complaint was to prevent the collection of taxes that were due.

This false statement denied me access to the court to assert my claim Civ. No. 84-5209.

I have always filed my tax return and paid my just taxes in accordance with the law. Due to the false statement made by Judge Waters, my appeal to the appeals court and to the Supreme court were rejected. As a result of this false statement made by Judge Waters, I filed a felony complaint against him as required of me by Title 18 U.S.C. §4. My complaint was apparently never acted upon.

When I filed my complaint covering the tax years 1980 and 1981, I filed a motion dated September 1, 1987 to disqualify Judge Waters because of his bias and prejudice. Even though Judge Waters withdrew from the case, in his letter dated September 24, 1987 he later assumed jurisdiction contrary to the decision in Strenger v. US, 233 F2d 947, 948, (9th Cir. 1956).

I filed another felony complaint with

the 8th. circuit court of appeals against Judge Waters under the provisions of Title 18 U.S.C. §4 dated August 4, 1989. This complaint was rejected. Since that time the order and memorandum opinion of Judge Waters has been filled with erroneous allegations and/or derogatory statements against me. The refusal of Judge Waters to recuse himself and the refusal of the appeals court to order Judge Waters to withdraw from my case was in direct contradiction of Title 28 U.S.C. §§144 and 453 and 455.

The U.S. Court of Appeals for the Eighth Circuit is not above falsifying the court record. In the appeals court order dated February 1, 1989, the court stated: "Moeller's attempt to allege a cause of action under 26 U.S.C. Section 7422 was also properly dismissed for failure to file his suit within the time requirements as set forth in 26 U.S.C. Section 6532(a)." This statement is entirely false My

complaint was filed well within the time limits set by Section 6532(a). This section establishes a two year limit.

Section 6532(a) is set forth verbatim as follows:

> Sec. 6532. Periods of limitation on suits.
> (a) Suits by Taxpayers for Refund. -
> (1) General rule. - No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

The IRS collection by lien and levy was finalized on September 3, 1985. My demand for refund was made on August 9, 1985. When I did not receive a response, I mailed a letter of inquiry dated May 7, 1986. Neither of my letters have been answered. My complaint was filed in the district court on July 14, 1987. According to my interpretation of the reference statute, I

still have two years from the date the IRS responds to my demand for refund in which to file my complaint. The question arises; where did the appeals court obtain evidence to support this falsification of the records? No mention was made in the district court that my complaint was filed out of time. Did the appeals court receive the false data from the defendant without notifying me?

Is is possible that Judges have entered into a criminal conspiracy to deny all non lawyer pro se and pro per plaintiffs access to the courts? There appears to be substantial evidence to support such a hypothesis.

I am a man of limited means, living off of my army pension and social security benefits. I am still in debt for money I borrowed to live on when the IRS agents seized money that I did not owe for five consecutive years. I cannot afford a lawyer to handle my case. I do all my own

work on my cases except for some typing, to include research, writing, copying, collating and assembling the work in order to assert my statutory and constitutional rights within my limited means. I am authorized to represent myself by Title 28 U.S.C. § 1654 and the Constitution of the United States. Judge Waters is apparently of a contrary opinion. An in depth investigation of H. Franklin Waters judicial conduct is long overdue.

This action on the part of the district court and the appeals court is in direct opposition of the decision of the Ninth Circuit Court of Appeals and in open defiance with the Supreme Court opinions in the case of Berger v. U.S., 255 US 22 (1921) and In Re Murchinson 349 US 133 (1955).

IV

IRS AGENTS ARE SUBJECT TO SUIT IN THEIR PERSONS WHEN THEY DEPRIVE A TAXPAYER OF HIS STATUTORY AND CONSTITUTIONAL RIGHTS.

Judge Waters is of the erroneous

opinion that public servants of the IRS are absolutely immune from suit even when they engage in unlawful conduct or deprive taxpayers of their statutory and constitutional rights. This concept is also held by the Eighth Circuit Court of Appeals who have upheld the lower court's order.

In Judge Waters letter opinion dated July 21, 1987, (see appendix Exhibit I at page 37), he states "the cases and statutes which hold that employees of the IRS may not be individually sued are almost too numerous to list."

In the case of Udey v. District Director IRS, 534 F Sup 219 (8th Cir. 1982), a case decided by Judge Waters, he also held that IRS agents are absolutely immune from suit. These statements are true only where the Government officials are acting within the scope of their authority and does not give them license to make false assessments or to deprive

taxpayers of their statutory or constitutional rights.

On or about August 14, 1985, I received a letter, "Notice of Deficiency" dated August 9, 1985, signed by William F. Barlow, District Director, covering the tax years 1982 and 1983.

My books and records for 1982 and 1983 were never examined by anyone. I was never furnished a copy of the audit report or the 30-day letter advising me of my administrative appeal rights as required by Federal Tax Regulations Section 301.6203-1 and 601.101 through 601.106. (See appendix page 102-106). This is a flagrant disregard of the IRS procedural requirements and deprived me of my statutory and constitutional rights of due process. This fact is more specifically set forth in section 601.106, Rule 1. (See Appendix page 106).

Is is common practice for the IRS employees to make an additional assessment

and forward a "Notice of Deficiency" without first examining the taxpayer's books? Or was I singled out for this unlawful procedure?

The decision of Judge Waters and the Eighth Circuit Court of Appeals in regard to immunity of Government officials are in direct contradiction with the decision of the 9th. Circuit court of appeals in the case of Bothke v. Fluor Engineers & Constructors, Inc., 713 F2d 1405 (9th Cir. 1983) and the case of Rutherford v. US, 702 F2d 580 (5th Cir. 1983).

Title 26 U.S.C. Section 7214 specifically authorizes taxpayer suits against individual IRS agents when they collect more taxes than are due. (See appendix page 98). Title 28 U.S.C. section 2679(b)(2) specifically removes government employees from the protection of the Tort Claims act when they have violated the constitutional or statutory rights of an individual. (See appendix page 112).

Title 42 U.S.C. Section 1985 and 1986 provides for action against Government officials in general who conspire to deprive citizens of any right or privilege and those persons who have knowledge of a criminal conspiracy and who have authority to prevent the criminal act and fail to do so.

The rejection by the Supreme Court of my petition for writ of certiorari for my 1954 case and the rejection of my petition for writ of certiorari of my 1987 case not only condoned the criminal acts of the IRS employees and the judges of the lower court, but actually encouraged the continuation of their criminal activities. In this connection, the court's attention is directed to Title 18 U.S.C. §§ 241 and 242 and Title 42 U.S.C. §§ 1985 and 1986 and Title 28 U.S.C. § 1343.

As a direct result of the unlawful acts of the IRS agents, my funds were seized by lien and levy against my army pension and

my social security benefits. All of my funds were taken. No provisions were made for living expenses or payment of child support payment mandated by court order and as required by Title 26 U.S.C. Section 6334.

Where a state law does not make provisions for a hearing to determine exemptions from levy, the district court in the case of Davis v. Paschell, 640 Fed Sup 198 (8th Cir. 1986) held the Arkansas Statute unconstitutional. It is therefore logical to assume that Title 26 U.S.C. Section 6334 is also unconstitutional since it makes no provisions for a hearing to determining exemptions prior to enforcing a lien.

The holding of the district court and appeals court as pertains to immunity of Government officials where they knowingly and wilfully violate statutory and constitutional rights of private citizens is in direct conflict with the decisions of

the 9th and 5th circuit courts of appeal. The decisions in the 8th Circuit also are in direct defiance of Supreme Court decisions in the case of Yick Wo v. Hopkins, 118 US 356 (1886), Marbury v. Madison, 1 Cranch 137 (1803), Scheuer v. Rhodes, 416 US 232 (1974) quoting Ex Parte Young, Bush v. Lucas 462 US 367 (1983), Harlow v. Fitzgerald, 457 US 800 (1982), Butz v. Economou, 438 US 478 (1978, Davis v. Passman, 442 US 228 (1979), Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 US 388 (1971).

V

TITLE 26 U.S.C. § 7422 PROVIDES A REMEDY FOR AGGRIEVED TAXPAYERS TO RECOVER TAXES THAT HAVE BEEN FRAUDULENTLY OR ILLEGALLY ASSESSED AND COLLECTED.

In accordance with Supreme Court decisions concerning state taxes, a remedy to recover taxes illegally assessed and collected must be plain, speedy and efficient, otherwise the tax law is considered to be unconstitutional.

This fact is set forth in the Supreme Court case of California v. Grace Brethren Church, 457 U.S. 393 (1982), where the court stated:

> "Courts must narrowly construe 'plain, speedy and efficient' exception to 28 U.S.C. § 1341 'plain, speedy and efficient' exceptions require that state remedy meet minimal procedural criteria which is satisfied only if it provides tax payer with full hearing and judicial determination at which tax payer may raise any and all constitutional objections to tax." (Emphasis added).

Also see Rosewell v. La Sale National Bank, 450 U.S. 503 (1981), where the court stated:

> "State remedy can only be considered to be 'plain, speedy and efficient remedy' within meaning of 28 U.S.C. § 1341 if remedy allows aggrieved tax payer full hearing and judicial determination at which all constitutional objections can be raised." (Emphasis added).

As pointed out by the court where a state tax law does not provide for a full hearing and a plain, speedy and efficient remedy for the tax payer to recover taxes which have been illegally assessed and

collected, the law is unconstitutional and therefore nul and void.

This same rule is equally applicable to federal tax law where I am denied access to the courts to recover taxes that have been illegally and fraudulently assessed and forcibly collected by lien and levy. I have been deprived of my administrative appeal rights and my constitutional right of due process by the illegal acts of IRS employees. I have been denied a plain, speedy and efficient remedy at law to recover taxes that have been illegally seized by IRS agents acting outside the perimeters of their authority under color of law.

Title 26 USC § 7422 appears on the surface to be adequate to provide an aggrieved taxpayer the right to a plain, speedy and efficient remedy at law. However, in my case this is obviously not true. I have been denied access to the court at every turn to recover taxes that

were illegally assessed and collected from me for the tax years 1979, 1980, 1981, 198a2 and 1983. I have been singled out and discriminated against by public servant employees of the IRS in a criminal conspiracy to deprive me of my money for taxes which I did not owe. The IRS agents have denied me my statutory rights of administrative appeal by circumventing and ignoring statutory law so as to deprive me of my statutory and constitutional rights of due process. A law which clothes an individual or group of individuals with such unbridled power cannot be permitted to stand. Where the agency refuses to police itself and its executive officials, not only condone but actually encourage the lawless conduct of its personal, the lawless action must be controlled by court action.

The case of Yick Wo v. Hopkins, 118 US 356 (1886) best describes my encounter with the unbridled and arbitrary power of the

IRS and my frustration with a court that abrogates and denies my attempts to exercise my statutory and constitutional rights. In Yick Wo the court states:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U.S. 259; Chy Lung v. Freeman, 92 U.S. 275; Ex parte Virginia, 100 U.S. 339; Neal v. Delaware, 103 U.S. 370; and Soon Hing v. Crowley, 113 U.S. 703.

Every sovereign citizen should be able to rely upon the law of the land, the Constitution and the decisions of the Supreme Court. I have not found this to be true in my dealing with the Internal Revenue Service or the courts.

I have been singled out by IRS agents in a criminal conspiracy to deprive me of

my constitutional and statutory rights. This fact is proven by the action of these agents where they approved all the authorized expenses both prior to and after the period of harassment. These authorized deductions were only denied during the five consecutive years that the IRS agents were conducting their unlawful harassment for the years 1979 through 1983.

This flagrant denial of my statutory rights to recover taxes that had been unlawfully assessed and seized under color of law and which I did not owe was in direct conflict with Title 26 U.S.C. Section 7422 and 7214 and Federal tax regulations The decision of the district court and the appeals are in direct defiance of Supreme Court decisions listed above.

VI

EACH TAX YEAR IS A SEPARATE AND DISTINCT CAUSE OF ACTION.

This fact is plainly set forth by the Supreme Court in the case of Commissioner of IRS v. Sunnen, 333 US 591 (8th Cir. 1948). In spite of the fact that this Supreme Court order was directed specifically to the 8th Circuit, Judge Waters defied the Supreme Court and issued his order of May 15, 1989 consolidating my two cases, Civ. 89-5039 for the tax year 1982 and Civ. 89-5049 covering the tax year 1983. Judge Waters cites Rule 42 FRCP as his authorize for the consolidation. Section (b) of Rule 42 specifically authorizes separate trials to avoid prejudice. Combining the complaints would prejudice my case because it would make the presentation of my evidence much more difficult. It is onerous enough to have to prove a negative without having to prove two separate causes of action where the evidence is distinctly different in each case.

SUMMARY

It is quite evident that the courts are returning to the rigid forms of pleadings required by the early English courts. Judges now use the rules to obstruct justice.

Constitutional and Statutory rights must give way to court rules as interpreted by a Judge who may be biased and prejudiced. Protected rights have become meaningless under such a system.

False accusations have been made against me by both the IRS employees and the courts.

My money has been unlawfully assessed and seized by the IRS.

Fines have been imposed upon me by both the IRS and the courts for offenses of which I am innocent.

The court records have been falsified in order to justify depriving me of my statutory and constitutional rights.

At no time have I been permitted to make appearance before the IRS or in the courts to refute the false accusations made against me or recover money unlawfully seized from me.

The courts have issued orders which deprived me of my statutory and constitutional rights and which are in direct conflict with statutes and the opinion of the Supreme Court.

I have been penalized and deprived of my statutory and constitutional rights because I have attempted to assert my constitutional and statutory rights as a pro se and per per plaintiff. These irregularities are brought to the attention of the Supreme Court as required of me by Title 18 U.S.C. Section 4.

This court has the jurisdiction, authority and the obligation to rectify this miscarriage of justice.

The courts below have so far departed from the accepted and usual course of

judicial procedures and the appeals court has sanctified such a departure in the district court so as to obstruct justice that the Supreme court must exercise its power of supervision to correct a miscarriage of justice.

Date 27 July 1990

Respectfully submitted:

Walter J. Moeller, Pro per

Route 2 Box 299-F

West Fork, AR 72774

(501) 839-2484

90-2162

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1989

Walter J. Moeller, Pro per

Petitioner

vs.

United States Government, et al

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

WALTER J. MOELLER, PRO PER
Route 2, Box 299-F
West Fork, AR 72774
(501) 839-2484

APPENDIX
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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 89-2662

Walter J. Moeller,

Appellant,

Appeal from the United States District Court for the Western District of Arkansas

[UNPUBLISHED]

v.

Unites States of America
Appellee

Submitted: March 12, 1990

Filed: May 11, 1990

Before MAGILL, Circuit Judge, HEANEY, Senior Circuit Judge, and BEAM, Circuit Judge.

PER CURIAM.

Walter Moeller appeals from the dismissal of his consolidated complaints against the Internal Revenue Service and

EXHIBIT A

individual agents. We affirm.

This is the latest in a series of suits Moeller has filed against the IRS. The history of the prior suits is detailed in the district court opinion. Moeller filed his latest complaints covering the tax years of 1982 and 1983 approximately two weeks apart.

The complaints duplicate many of the allegations the district court, affirmed by this court, dismissed as frivolous in prior suits. In response to a court order to amend the complaint to conform to Rule 8 of the Federal Rules of Civil Procedure, Moeller merely rearranged the paragraphs of his original complaint. The district court dismissed the matter with prejudice pursuant to Rule 41(a). We agree with the district court's assessment of the complaint and find no error in the dismissal.

We also affirm the district court's imposition of sanctions in the amount of $2500 and its directive to the court clerk to accept no more filings until paid. Moeller has repeatedly refused to follow court orders and has filed frivolous complaints and motions apparently intended only to harass the IRS and waste judicial time. The directive to accept no further filings serves to make the sanctions effective and protect the court processes.

We also find this appeal frivolous and grant the government's request for sanctions on appeal in the amount of $1500.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

v. Civil No. 89-5049

UNITED STATES OF AMERICA DEFENDANT

WALTER J. MOELLER PLAINTIFF

v. Civil No. 89-5039

UNITED STATES OF AMERICA DEFENDANT

ORDER OF CONSOLIDATION

On this 16 day of May, 1989, upon review of the files in the above captioned matters, the court finds that these actions involve common questions of law and fact and that, for such reasons these matter should be and hereby are consolidated for pretrial and trial pursuant to the provisions of Rule 42 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D
May 16, 1989
Chris R. Johnson, Clerk
by: Nancy Watson
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

v. Civil No. 89-5039

UNITED STATES OF AMERICA DEFENDANT

O R D E R

On this 3rd day of July, 1989, upon consideration of defendant's motion to strike filed herein on June 22, 1989, and plaintiff's response thereto filed June 30, 1989, the court finds that said motion should be and it hereby is granted for the reason that the compliant filed by plaintiff is replete with "redundant, immaterial, impertinent, or scandalous matter." Because such improper matters are so interwoven in the entire complaint, it will be stricken in its entirety unless plaintiff, by the close of business on July 14, 1989, files an amended complaint which complies with Rule 8(a) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED

H. Franklin Waters
United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D
Jul 5, 1989

Chris R. Johnson, Clerk
by: Nancy Watson
Deputy Clerk

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. CIVIL NO. 89-5039
89-5049

UNITED STATES OF AMERICA DEFENDANT

O R D E R

On this 18th of August, 1989, for the reasons set forth in the memorandum opinion filed contemporaneously herewith, the court finds that this matter should and it hereby is dismissed with prejudice.

IT IS FURTHER ORDERED that sanctions should be and they are hereby imposed against Walter J. Moeller in the amount $2,500.00. Such sum shall be paid to the clerk of the court immediately and this order shall be considered to be a judgment to be collected as any other judgment at law.

The clerk of the court is directed to refuse to accept any additional filings in this matter with the exception of the filings necessary to perfect an appeal of

the dismissal of this action to the Court of appeals for the Eighth Circuit, and to refrain from accepting any other lawsuits or pleadings attempting to institute new actions tendered by Walter J. Moeller, or in his behalf, until the amount of the sanctions imposed above is paid to the clerk of the court.

IT IS SO ORDERED.
U.S. DISTRICT COURT
WESTERN DIST. ARKANSAS

H. Franklin Waters (seal)
United States District Judge

F I L E D
Aug 18, 1989

This document entered on docket in compliance with Rule 58 and 79(a) FRCP.

Chris R. Johnson, Clerk
Nancy Watson (seal) 8-18-89 by Nancy Watson

EXHIBIT D

U.S. DISTRICT COURT
WESTERN DIST. ARKANSAS
F I L E D
Aug 18 1989

Chris R. Johnson, Clerk
by Nancy Watson (seal)
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. CIVIL NO. 89-5039
89-5049

UNITED STATES OF AMERICA DEFENDANT

MEMORANDUM OPINION

On April 19, 1989, Walter J. Moeller filed case No. 80-5039 against the United States. The complaint consists of 13 pages plus an additional 20 pages of attached exhibits. It is replete with scandalous and impertinent charges made against various officials of the Internal Revenue Service and prays for "actual damages in the amount of $15,581,83 for which I am entitled plus interest as accrued and compounded from the time of the theft." Additionally, Mr. Moeller prays for

"general damages as authorized by the law and whatever the jury shall award" and "special damages for cost of typing, copying, transportation, my time and effort and court cost in connection with the recovery of my stolen money."

Then on May 5, 1989, case No. 80-5049 was filed. The complaint filed in this case is substantially identical to the other one but in this case he is suing for $11,979.37 which he alleges was stolen from him by the United States through the criminal acts of various employees of the Internal Revenue Service. By order dated May 15, 1989, the court, finding that these actions involved common questions of law and fact, consolidated them pursuant to the provisions of Rule 42 of the Federal Rules of Civil Procedure. For what ever reason, plaintiff has objected to the consolidation of these cases and has filed a notice of appeal, attempting to appeal the court's order of consolidation.

By order dated July 3, 1989, the court, acting upon a motion to strike filed by the United States, found that the complaint was filled with "redundant, immaterial, impertinent, or scandalous matter" and that, since these improper matters were so interwoven with other allegations in the complaint, the entire complaint would be stricken unless the plaintiff, by July 14, 1989, filed an amended complaint complying with Rule 8(a) of the Federal Rules of Civil Procedure.[1] Mr. Moeller has now filed an amended complaint in Case No. 89-5039 denominated "Amended Complaint by Order of the U.S. District Court to Recover Taxes Unlawfully Assessed and Collected."

---

[1]. The court has recently noted for the first time that the government's motion to strike filed on June 22, 1989, appears to have been filed, probably inadvertently, only in case No. 89-5039 and the court's order ruling on that motion also bears only that number. This is true even though the order consolidating the cases was entered prior to the government's motion to strike. The court intended that its order ruling on the motion to strike cover the complaints filed in each of the consolidated cases.

Not only does this amended complaint not come close to compliance with the court's order and Rule 8(a), Fed.R.Civ.P., it attempts to bring into the lawsuit an unspecified number of individuals. His amended complaints name three persons, "individually and in his capacity as a public servant employee of the IRS" and an indeterminate number of "UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE Internal Revenue Service" et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service." The amended complaint consists of 12 pages and an additional 23 pages of attached exhibits. It prays for the same relief as in the earlier complaint except Mr. Moeller has now added a claim for "punitive damages against the individual defendants as authorized by Title 16, U.S.C. § 7214 and Title 28 U.S.C. § 2679(d)(2) for whatever amount the jury shall decide."

A mere scanning of Mr. Moeller's amended complaint shows that he did not even attempt to comply with the court's earlier order or with Rule 8(a) since it could not even be argued that his claim is set forth in a "short and plain statement of the claim showing that the pleader is entitled to relief" as required by that Rule and the court's order. Instead, Mr. Moeller utilized the court's previous order as an excuse to restate the scandalous and impertinent matters stated earlier and, in addition, to sue individuals in both their individual and official capacities. Mr. Moeller's conduct in this case and in other cases discussed below, has proven to this court that he does not intend to "play by the rules."

This is not this court's first experience with Mr. Moeller. Mr. Moeller obviously has an intense dislike for the Internal Revenue Service and it appears to this court that he desires to cause that

example of that, as detailed above, he filed substantially identical 13 page complaints with 20 pages of exhibits making almost identical allegations barely 16 day apart. Then, when the court, to save the expenditure of unnecessary costs, time, and energy, both by the litigants and this court and its personnel, consolidated the cases as permitted by the rules, Mr. Moeller not only objected, but attempted to appeal the court's order. It appears that Mr. Moeller's desire to litigate those identical claims in two separate lawsuits could have no other purpose than to cause the Internal Revenue Service, and perhaps this court, as much grief as possible.

The court has good reason to believe that this is not a case where the plaintiff has innocently wandered into this unfamiliar legal arena as a pro se litigant to right a wrong perpetrated against him. Instead he is an experienced "suit filer" who had reason to know "the rules" and that this court and other courts expected him to

follow them. In late 1984 be brought Case No. 84-5209 by filing a complaint consisting of 47 pages, seeking compensatory damages of $100,000 and punitive damages of $100,000,000 against twelve named Internal Revenue Service employees and an unspecified number of "unknown" employees. This court, in a memorandum opinion issued on January 3, 1985, dismissed the compliant, sua sponte, because it was frivolous on its face. In that opinion, the court attempted to explain to Mr. Moeller that, if he did not, in fact, owe the taxes which he was apparently complaining that he had been wrongly required to pay, he had:

> [T]wo courses of action which are certainly adequate. He may, as pointed out above, refuse to pay the tax and bring an action in tax court (28 U.S.C.§ 6213), or he may pay the tax and bring an action in district court to recoup it. (26 U.S.C. § 7422). He may not, however, prevent the payment of the tax by seeking to enjoin the United States and its duly authorized officers from collecting the tax, nor may he sue those officers for damages for acting to carry out the duties imposed upon them by law.

Mr. Moeller, obviously believing that the

court was wrong, and apparently believing that the court was part of the "conspiracy" that he seems to have imagined, appealed the court's ruling to the Court of Appeals for the Eighth Circuit. That court summarily affirmed this court's ruling, and denied Mr. Moeller's request for an en banc hearing. He then petitioned the United States Supreme Court for certiorari, and that request was summarily denied.

It appears that Mr. Moeller learned little from that experience because in mid 1987 he filed case no. 87-5089 against the United States and 19 named Internal Revenue Service employees and the "unknown public servant employees" which he seems to believe he is suing in each of the lawsuits filed. Many of the individuals sued are the same individuals that were sued in Case No. 84-5209. The only "good thing" that can be said about the 1987 lawsuit is that the complaint was not as long and did not take quite as long to read as the one filed in the 1984 action. It only consisted of

36 pages attempting to express 19 causes of action in 105 numbered paragraphs. However, the "cost" went up. In this lawsuit, Mr. Moeller demanded $100,459,849.09. Otherwise, the allegations of the complaint were just as frivolous as those made in the earlier lawsuit. Obviously, Mr. Moeller is not easily deterred, even by actions by this court, the Court of Appeals, or the United States Supreme Court.

The court found, sua sponte, that the allegations of the complaint were frivolous, and all claims were dismissed except that the court treated the complaint as a suit under 26 U.S.C. § 7422 for refund of taxes allegedly wrongfully assessed and paid under protest. Naturally, Mr. Moeller was not satisfied with that ruling so he, predictably, filed a notice of appeal. He also filed a motion to disqualify this court from proceeding further in this matter, citing as at least one of the grounds the court's ruling in the earlier

action. That motion and supporting papers, including exhibits, consists of some 87 pages.

Shortly thereafter, defendants' motion to dismiss brought on 38 pages of additional filings by Mr. Moeller, 29 of which were in opposition to the defendants' one page motion requesting leave to file a reply brief. The court denied the motion to disqualify, and treated the motion to dismiss as a motion to make more definite and certain. Plaintiff responded by filing 13 pages in which he contended that the court was biased and prejudiced and generally "wrong" and a multiple page petition for writ of mandamus. The court dismissed the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the court's earlier order.

An appeal was filed, and this court's ruling was affirmed in a per curiam opinion and a request for an en banc hearing was denied. A petition for writ of certiorari

to the Supreme Court was also denied.

Again, that experience did not deter Mr. Moeller from his objective, whatever it is. The mandate was issued in the 1987 case finally ending it on April 5, 2989, and plaintiff filed this action 14 days later.

It is impossible to tell from the initial complaints filed in each of these consolidated actions and the amended complaint in Case No. 89-5039 what Mr. Moeller believes his causes of action are, or whether this court has jurisdiction of them, whatever they are. The court has given Mr. Moeller every opportunity to rectify that situation by directing that he file an amended complaint complying with Rule 8(a). Anyone with as much litigation experience as Mr. Moeller should be able to locate a copy of the federal rules and if he did, he should have been able to determine that what the court was telling him, as it told him in the earlier lawsuits, was that he must state his cause

of action in simple and concise terms, as required by the rules, without embellishment by allegations of scandalous and impertinent claims made against Internal Revenue Service employees who were simply doing what they perceived to be their job, thus making them, in most cases at least, immune from suit. This court simply cannot determine from Mr. Moeller's voluminous and wordy filings what his claim is, and cannot expect the defendants to know and defend against them. Since the court is convinced from his conduct in this case and other cases that Mr. Moeller does not intend to comply with the rules or the court's orders, the court has concluded that its only alternative to to dismiss his alleged causes of action.

This case and the other cases detailed above are an example of one of the problems facing courts in general and federal courts in particular. Because of our litigious society and the ease of access to the courts, a great deal of time and money is

spent in disposing of totally frivolous litigation. For every frivolous lawsuit filed, a great deal of expense, time, and energy is utilized is disposing of it. If it cannot be disposed of prior to summons being issued, then the defendants are required to hire lawyers and defend themselves from the frivolous charges.

The court recognizes that legitimate complaints are often made by pro se litigants, and that practice is not to be discouraged, but the court also recognized that there is a group of litigants "out there" whose lobby is litigation. It is not possible to determine whether Mr. Moeller is one of that small group, but it is obvious to the court that he is bent upon causing the Internal Revenue Service and the courts as much inconvenience and expense as possible. As already indicated, he files two lawsuits when one would do and then objects to the court consolidating them and appeals when they are. As detailed above, as soon as one of his

lawsuits finally works its way through the system, ending when the United States Supreme Court refuses to take his case, he starts another round of litigation involving identical or nearly identical issues, obviously intending for it to take the same course.

The court believes that neither of the lawsuits which are consolidated in this action, nor the ones earlier terminated after months of litigation, have merit. In spite of that, a great deal of time, energy, and resources have been used in disposing of Mr. Moeller's frivolous complaints. This court believes that it has important business to do, yet it has, in total, undoubtedly expended several days in dealing with Mr. Moeller's claims made by him since late 1984. From a great deal of experience gained since then, the court is convinced that these consolidated cases with take the same course. The Court of Appeals will be required to spend the time necessary to deal with each of his appeals,

and since he obviously intends to appeal each issue as it arises, whether appealable or not, the time necessary to accomplish that is not inconsequential.

Mr. Moeller, and other like him, simply must be discouraged from frustrating the system as Mr. Moeller has, irrespective of his motive. It was the "problem" caused by litigation such as that which Mr. Moeller is wont to institute that resulted in the passage of Rule 11 of the civil rules of procedure. The rule mandates (it says shall, not may) that trial courts impose appropriate sanctions in cases where frivolous filings are made. Since its adoption, this court has consistently followed the dictates of that rule in all cases where the court believes frivolous papers are files, including cases filed by pro se litigants where the court believes the circumstances justify.

In Kirouski v. Volker, 819 F.2d 201, 204 (8th Cir. 1987), the court said, in words that are particularly appropriate to

this case, that:

> We recognize that pro se complaints are read liberally, but they still may be frivolous if filed in the face of previous dismissals involving the exact same parties under the exact same legal theories.
>
> * * *
>
> [R]ule 11 was adopted to spare innocent parties and overburden courts from the filing of frivolous lawsuits.

Rule 11 provides that the signer of any pleading certifies that it is "grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or to needless increase in the cost of litigation." For the reasons already set forth, the court is convinced that Rule 11 has been egregiously violated and that substantial sanctions are not only justified but required in this case.

Mr. Moeller has clearly demonstrated that he is bent upon harassing the

defendants in this case and has been for several years now. He should have learned from the earlier lawsuits that he cannot proceed in the manner that he has attempted to proceed in this case, but he has learned nothing from those experiences. Instead, he is obviously convinced that "everyone is out of step" but him, and he intends to continually maintain a lawsuit in the courts against his enemies in the Internal Revenue Service. Because of Mr. Moeller's conduct since 1984, and because of his obvious intent to continue that conduct irrespective of the results reached, the court is convinced that substantial sanctions should be imposed against Mr. Moeller pursuant to the provisions of Rule 11. As partial reimbursement for the expenses that the "system" has been required to endure because of this matter and the others behove it, the court thereby imposes sanctions against Walter J. Moeller in the amount of $2,500.00.[2]

[2] This court believes that it is normally advisable to give recalcitrant attorneys or parties an opportunity to show cause why sanctions should not be imposed, but that is clearly not required by the rule. See Advisory Committee Note to the 1983 Amendments, which is reprinted at 97 F.R.D. 165, 200-201. No hearing is required. Davis v. Veslan Enterprises, 765 F.2d 494 (5th Cir. 1985); Rogers v. Lincoln Towing Service, Inc., 596 F.Supp. 23 (D.C.Ill. 1984), aff'd, 771 F.2d 194 (7th Cir.1985).

Also, because plaintiff has demonstrated that he intends to file one lawsuit after another until he accomplishes whatever he is attempting to accomplish, the court believes that it is appropriate for this court to take action to deter such conduct. In order to accomplish that, at least until the system is partially reimbursed for the cost of this lawsuit and the ones before it, the clerk of the court is directed to refrain from accepting for filing any additional pleadings or lawsuits tendered by Walter J. Moeller, or tendered in behalf of him, except those necessary to perfect an appeal, of the court's action detailed in this memorandum opinion, until the $2,500.00 sanctions imposed above are

EXHIBIT D

paid to the clerk of the court.

This matter will be dismissed with prejudice by separate order with such order providing for the sanctions imposed above.

Dated: August 18, 1989

H. Franklin Waters (seal)
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually; Et Al. DEFENDANTS

U. S. District Court
Western Dist. Arkansas
FILED
Jan 3 1985
Pat L. Graham, Jr., Clerk
By
Deputy Clerk

O R D E R

On this 3 rd. day of January, 1985, for the reasons set forth in a memorandum opinion filed contemporaneously herewith, the court, sua sponte, dismisses this matter with prejudice.

IT IS SO ORDERED.

H. Franklin Waters (Seal)
United States District Judge

 EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually; DEFENDANTS
Et Al.

U.S. District Court
Western Dist. Arkansas
FILED
Jan 3 1985
Pat L. Graham, Jr., Clerk
By
Deputy Clerk

MEMORANDUM OPINION

This appears to be another of the "tax protester" lawsuits which are frequently filed in this court. Much of the 47-page complaint filed by the plaintiff contains phrases which are almost identical to phrases which are found in many of the numerous lawsuits of this type which have been filed.

Plaintiff, Walter J. Moeller, sues Roscoe L. Eggers, Jr., Commissioner, Internal Revenue Service, and eleven other named individuals who are alleged to

 EXHIBIT E

be agents of or employees of the Internal Revenue Service. In an apparent attempt to make certain that he had sued everyone who had in the past or might in the future deal with his tax returns, he also sued "Unknown Public Servant Employees of the Internal Revenue Service, et al., whose names are indicated by the records of the Internal Revenue Service, Individually." While much of the 47 pages of the complaint contains mere conclusions, it is apparent that plaintiff complains about the validity of certain tax assessments which have been made against him, and the attempts by the Internal Revenue Service to collect the taxes which it, through its Commissioner and other employees, claim are due. Plaintiff claims that these attempts violate almost every constitutional and civil right afforded citizens of the United States by the United States Constitution, and prays for $100,000,000.00 in punitive damages; $100,000,000.00 in compensatory damages; $2,216.43 in actual damages; and

for a writ of mandamus compelling the defendant to "abide by his oath of office and force all the civil servant employees of the Internal Revenue Service to obey and protect the rights of sovereign citizens under the Constitution of the United States of America."

This lawsuit is very similar to the suits which resulted in this court's opinion in Udey v. District Director, 534 F. Supp. 219 (W.D. Ark. 1982), and for the reasons set forth in that opinion, the court finds that Mr. Moeller's cause of action is frivolous and should be dismissed. As the court said in that opinion:

> "The court finds that it clearly does not have jurisdiction in any of these cases and that, as far as an action in this court is concerned, they are frivolous on their face and without merit. Whether Mr. Udey actually owes the tax the Internal Revenue Service says is due is of no importance in determining the jurisdiction of this court. The law very specifically provides a remedy for him and other taxpayers in the event that the Internal Revenue Service is wrong and he does not owe the tax .... If Mr. Udey, in fact, does not owe the taxes

> which have been assessed against him, he has two courses of action which are certainly adequate. He may, as pointed out above, refuse to pay the tax and bring an action in tax court (26U.S.C. Section 6213), or he may pay the tax and bring an action in district court to recoup it (26 U.S.C. Section 7422). He may not, however, prevent the payment of the tax by seeking to enjoin the United States and its duly authorized officers from collecting the tax, nor may he sue those officers for damages for acting to carry out the duties imposed upon them by law.

As indicated above, plaintiff has sued at least twelve named individuals, all employees of the United States, and all "Unknown Public Servant Employees of the Internal Revenue Service, et a;/. whose names are indicated by the records of the Internal Revenue Service, Individually." It is obvious on the face of the complaint that there is no basis for this lawsuit, and it would serve no useful purpose for this court to require the numerous individuals named as defendants to retain counsel, at the expense of the taxpayers, to defend this lawsuit. It would serve no purpose, because it is apparent from the

face of the complaint that it will, sooner or later, be dismissed because of lack of merit, and, for this reason, the court will, contemporaneously with the issuance of this opinion, sua sponte, dismiss this action.

This 3 rd. day of January, 1985

H. Franklin Waters (Seal)
United States District Judge

United States Court of Appeals
For the Eighth Circuit

No. 85-1211WA September Term, 1984

Walter J. Moeller, Appellant,
v.
H. Carradine, etc., et al, Appellees.

Appeal from the United States District Court for the Western District of Arkansas

This pro se appeal rises from an order entered by the United States District Court for the Western District of Arkansas in Case No. 84-5209. The Court has carefully reviewed the District Court file in connection therewith.

It is ordered by the Court that appellant show cause, within 15 days of the date of this order, why the judgment of the District Court should not be summarily affirmed.

February 25, 1985

United States Court of Appeals
For the Eighth Circuit

No. 85-1211-WA September Term 1984

Walter J. Moeller, Appellant
vs.

H. Carradine, etc., et al, Appellees.

Appeal from the United States District Court for the Western District of Arkansas

On February 25, 1985, the Court directed appellant to show cause why the judgement of the District Court should not be summarily affirmed. The court has carefully considered appellant's response to the show cause order, as well as the original file of the District Court, and it is hereby ordered that the judgment of the District Court dismissing the complaint with prejudice be AFFIRMED. See, 8th Cir. R. 12(a).

March 21, 1985

 EXHIBIT G

United States Court of Appeals
For the Eighth Circuit

No. 85-1211-WA September Term 1984

WALTER J. MOELLER, Appellant,

vs.

H. CARRADINE, ETC., ET AL., Appellees

Appeal from the United States District Court for the Western District of Arkansas

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied

April , 1985

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. CIVIL NO. 87-5089

UNITED STATES GOVERNMENT, DEFENDANTS

ET AL.

O R D E R

On this 21st day of July, 1987, the court, after considering the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitutional Rights Libel," finds, sua sponte, that such pleading is frivolous on its face except to the extent that it attempts to allege a cause of action under 26 U.S.C § 7422 for refund of taxes wrongfully assessed and paid under protest. All other allegations of said pleading, and all defendants with the

exception of the United States, are dismissed from this action, with prejudice. This matter shall remain pending, subject to further orders of the court, and will be considered to be a complaint to collect taxes allegedly paid by the plaintiff, under protest, in the amount of $10,316.54, $467.45 of which has been refunded to the plaintiff.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Jul 22 1987

Beverly R. Stites, Clerk
By Rhonda Clark
Deputy Clerk

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

July 21, 1987

Mr. Water J. Moeller
Route 2
West Fork, Arkansas 72744

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, Arkansas 72902

Re: Walter J. Moeller v. United States Government, et al.
Civil No. 87-5089

Gentlemen:

The court has received and reviewed the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitution Rights Libel" filed by Mr. Moeller. The court is convinced that the complaint is, by and large, frivolous on its face. The cases and statutes which hold that employees of the Internal Revenue Service may not be individually sued are almost too numerous to list. For example, 26 U.S.C. § 7422,

 EXHIBIT I

the very statute cited by Mr. Moeller for jurisdiction, states: "A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative."

While it is difficult to determine from the 36 pages which comprise the complaint that Mr. Moeller has really asked for a refund of taxes wrongfully paid, the court will liberally construe the "pleading" in favor of Mr. Moeller and will consider this to be an action brought under 26 U.S.C. § 7422 for refund of taxes wrongfully assessed and paid under protest. The court, sua sponte, determines that all other allegations of the complaint are frivolous on their face and should be dismissed. All defendants, other that the United States, will be dismissed from the lawsuit with prejudice.

Yours very truly,

H. Franklin Waters (seal)

cc: U.S. Clerk

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

September 24, 1987

Mr. Water J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller v. United States Government, et al. Civil No. 87-5089

Gentlemen:

Mr. Moeller has filed a motion asking that I disqualify in this case, and the government has responded.

I understand that at least some portion and perhaps all of this case is on appeal to the Court of Appeals, and I am not certain that I have jurisdiction to take

any action in the matter unless and until it is remanded. For this reason, I will take no action on the motion until then.

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO.87-5089
	)	
UNITED STATES GOVERNMENT ET AL.,	)	
	)	
Defendants	)	

ORDER

Defendant's Motion for Leave to File Reply is granted. Defendant's Reply to Plaintiff's Opposition to and Response to Defendant's Motion to Dismiss shall be deemed to be filed the date that this Order is entered on the docket.

SO ORDERED this 8th day of February, 1988.

H. Franklin Waters (seal)

UNITED STATES DISTRICT JUDGE

EXHIBIT K

U.S. District Court
Western Dist. Arkansas

F I L E D

Feb 8 1988

Chris R. Johnson, Clerk
By Rhonda Clark (seal)
Deputy Clerk

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT,
ET AL. DEFENDANTS

O R D E R

On this 19th day of February, 1988, upon consideration of the entire file herein the court finds for the reasons set forth in its letter to plaintiff and the attorney for the defendant, a copy of which is attached hereto and made a part hereof, that plaintiff's motion to disqualify the undersigned be and it hereby is denied. The court further finds that defendant's motion to dismiss should be and it hereby is considered to be a motion to make more definite and certain, and plaintiff is ordered and directed to make his motion more definite and certain in the manner specified in the court's letter.

IT IS SO ORDERED.

 EXHIBIT L

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Feb 19 1988
Chris R. Johnson, Clerk
By JC (seal)
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
POST OFFICE BOX 1908
FAYETTEVILLE, ARKANSAS 72702-1908

H. Franklin Waters
Chief Judge

February 19, 1988

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller, v. United States Government, et al.
Civil No. 87-5089

Gentlemen:

As you know, this case has been pending for several months and, because Mr. Moeller has appealed the court's order disposing of a portion of the case, this court has taken no action for several months. It was, however, again called to the court's attention because of the blizzard of papers

 EXHIBIT L

brought on by the government filing its slightly more than one page motion for relief to file a reply to plaintiff's response to the government's motion to dismiss. When the court granted that motion and a two page reply was filed by the defendant, that brought on twenty-nine pages of additional filings by Mr. Moeller.

That has caused the court to again look at the matter, and has determined that it has jurisdiction to proceed in spite of the notice of appeal filed by plaintiff. This is because, in the court's view, the filing of the notice of appeal is clearly an attempt to appeal a non-appealable order. Of course, 28 U.S.C. § 1291 allows the appeals only from "final decisions" of the district courts. The courts dismissal of only a portion of the lawsuit, leaving other matters to be tried is not a final order within the meaning of that statute.

The United States Supreme Court said long ago in Catlin v. United States, 321

U.S. 229, 233 (1945) that:

> A `final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.

As the Supreme Court pointed out in that case, the purpose of 28 U.S.C. § 1291 is clearly to prevent piecemeal appeals.

The court has concluded that plaintiff's attempted appeal in this case is clearly an attempt to appeal an order that is not final. What the court did in the earlier order to dismiss only a portion of the lawsuit against some of the defendants. There are still issues to be disposed of. Thus, the court's earlier order was not a "final decision" because the court has more to do than execute the judgment rendered. It must, if it reaches that point, try the issue of whether plaintiff is entitled to tax refunds for the years in question.

Since that is true, this court has jurisdiction to proceed in this matter and to rule on the motion for summary

judgment. The Court of Appeals for the Second Circuit, in Leonhard v. United States, 633 F.2d 599 (2d Cir. 1980), in a well-reasoned opinion, held that the filing of the notice of appeal of a non-appealable order does not deprive the trial court of jurisdiction, and said, "[W]e see no efficiency to be gained by allowing a party arbitrarily to halt the district court proceedings by filing a plainly unauthorized notice which confers on this court the power to do nothing but dismiss the appeal." Id at 610.

On September 1, 1987, plaintiff filed a motion to disqualify this court and a brief in support and subsequently filed a response to the government's opposition to the motion. The motion and response of plaintiff consists of some 87 pages.

It is clear from the materials included with Mr. Moeller's motion that it has no merit. It is obvious that Mr. Moeller objects to the court's handling of this

case and a prior one and, as he points out,he does not know me and I do not know him. His remedy, if he disagrees with the court's rulings, is to appeal and he appears to have discovered how to do that.

As is pointed out in 13A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3452 it is not enough to cause a judge to disqualify to show that he has acquired from what has gone on during a case a personal conviction as to the merits of it. Nor, is the judge disqualified because he has presided over some other case involving the same party or closely related facts. Instead, it must be shown that:

> The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other that what the judge learned from his participation in the case.

United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). See also the several cases cited at footnote 13 of the Wright & Miller article at 559.

As indicated, the court has concluded that it is time to get this matter ready for trial if it is going to be tried, or if it is not, to dispose of it. The court agrees with the defendant that it can hardly be expected that either the defendant or the court know what Mr. Moeller claims his cause of action is from the 36 page, 104 paragraph complaint filed by him. As the court ruled in its letter of July 21, 1987, and accompanying order, all portions of the lawsuit have been dismissed with the exception of his claim, if he has made such a claim, that he is entitled to recover taxes in the amount of $10,316.54, $167.45 of which has been refunded to the plaintiff. The court will consider the defendant's motion to dismiss as a motion to make more definite and certain. Plaintiff will have ten days from the date of this order to amend his complaint to allege this cause of action, if he believes he has one. Such amended

complaint will comply with Rule 8 of the Federal Rules of Civil Procedure and will, thus, be "a short and plain statement of the claim showing that the pleader is entitled to relief." The pleading must be in concise and plain terms showing what the plaintiff contends the government did to him in relation to those taxes. The court will not accept a pleading which attempts to make claims other that that which the court left pending by its July 21, 1987, letter and order.

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER, Pro Se PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT, ET AL DEFENDANTS

O R D E R

On this 28th day of March, 1988, upon consideration of the entire file herein, the court finds:

1) That by letter dated February 19, 1988, the plaintiff was advised that the court had considered defendant's motion to dismiss as a motion for more definite statement and plaintiff was ordered and directed to, within ten days, reduce his 36 page 104 paragraph complaint previously filed by him to "a short and plain statement" of his claim as required by Rule 8 of the Federal Rules of Civil Procedure.

2) That defendant's response to the court's order was to file, on February 24, 1988, a 13 page response contending that the court was biased and prejudiced and

 EXHIBIT M

generally "wrong" and a multiple page petition for writ of mandamus.

That the court was concluded that the "claim" of plaintiff should be and it hereby is dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure in that plaintiff has failed to comply with the Federal Rules of Civil Procedure and a specific order of the court.

IT IS, THEREFORE, CONSIDERED ORDERED AND ADJUDGED that plaintiff's complaint filed herein should be and it hereby is dismissed with prejudice and that this matter should be and it hereby is terminated. The clerk of the court is directed to refrain from accepting further filings in this matter other than those filings necessary for plaintiff to perfect an appeal if that is his desire.

IT IS SO ORDERED.

H. Franklin Waters (seal)
United States District Judge

U.S. District Court

Western Dist. Arkansas

F I L E D

Mar 28 1988

Chris R. Johnson, Clerk

By N.W.

Deputy Clerk

This document entered on docket
in compliance with Rule 58 and
79(a), FRCP
on 3-29-88 by N.W.

EXHIBIT M

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 87-2141

Walter J. Moeller, Appellant, v.	* Appeal from the United States District Court for the Western District of Arkansas
Roscoe L. Eggers, Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the IRS; Richard C. Voskuill, Individually and in his	*

EXHIBIT N

capacity as a public *
servant employee of the *
IRS; V. Regan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; M. Sorrells, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Gus McClanahan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Tony Treat, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Milton A. Barnett, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David Cole, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David N. Bradshaw, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Margaret Roberts, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; Linda Sisson, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; C. B. Harmon, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Raymond P. Keenan, *
Individually and in his *
capacity as a public *
servant employee of the *

IRS; and Unknown Public Servant Employees of the Internal Revenue Service et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service. *

Appellees.

Filed: September 22, 1988

Before HEANEY, BOWMAN and MCGILL, Circuit Judges.

O R D E R

The appeal of Walter J. Moeller is dismissed for lack of jurisdiction.

A true copy.

Attest: Robert D. St. Vrain (seal)

Clerk, U.S. Court of Appeals
Eighth Circuit

U.S. District Court
Western Dist. Arkansas
F I L E D
Nov 28 1988
Chris R. Johnson, Clerk
By
Deputy Clerk

United States Court of Appeals

For the Eighth Circuit

No. 87-2141

Walter J. Moeller,	*	
	*	
Appellant,	*	
	*	
vs.	*	Appeal from the
	*	United States
Roscoe L. Eggers, etc,	*	District Court
et al	*	for the Western
Appellees	*	District of
	*	Arkansas

Appellant's petition for rehearing en banc has been considered by the court and is denied.

Petition for rehearing by the panel is also denied.

November 2, 1988

Order Entered at the Direction of the Court:

Robert D. St. Vrain (seal)
Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1782

Walter J. Moeller,
Appellant,
v.

United States of America;Roscoe L.Eggers Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the IRS; Richard C. Voskuill, Individually and in his

Appeal from the United States District Court for the Western District of Arkansas

capacity as a public *
servant employee of the *
IRS; V. Regan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; M. Sorrells, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Gus McClanahan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Tony Treat, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Milton A. Barnett, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David Cole, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David N. Bradshaw, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Margaret Roberts, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; Linda Sisson, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; C. B. Harmon, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Raymond P. Keenan, *
Individually and in his *
capacity as a public *
servant employee of the *

IRS; and Unknown Public Servant Employees of the Internal Revenue Service et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service. *

Appellees.

Submitted: January 10, 1989
Filed February 1, 1989

Before JOHN R. GIBSON, WOLLMAN, AND BEAM, Circuit Judges.

PER CURIAM.

Walter J. Moeller appeals the district court's order dismissing his suit sua sponte pursuant to Federal Rule of Civil Procedure 41(b) for failure to file a "short and plain" statement of his claim as required by Federal Rule of Civil Procedure P.8, and as ordered by the court. We affirm.

On July 14, 1987, Moeller filed a complaint seeking damages and a refund of

taxes collected "for the years 1980 and 1981," alleging, inter alia, that the United States Government, nineteen named IRS employees, and other unknown IRS employees, had engaged in a conspiracy to defraud him of his property, deprive him of his constitutional rights, and libel him. The district court, sua sponte, found the pleading frivolous except to the extent it attempted to allege a cause of action under 26 U.S.C. § 7422 for refund of taxes wrongfully assessed and paid under protest. The court dismissed with prejudice all other claims and all defendants except the United States.

Moeller appealed the court's partial dismissal and filed a motion in the district court to disqualify the district court judge on the ground of personal bias. The district court determined that Moeller's appeal from the court's nonappealable order did not divest the district court of jurisdiction to proceed;

denied Moeller's motion to disqualify; and ordered Moeller to make his complaint more definite as specified in the court's accompanying letter. When Moeller failed to comply, the court dismissed his action under Federal Rule of Civil Procedure 41(b). This appeal followed.

The district court's initial order of partial dismissal was correct. See Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985); Cameron v. IRS, 773 F.2d 126 (7th . 1985); South Carolina v. Regan, 465 U.S. 367, 376-74 (1984). Moeller's appeal from the court's order of partial dismissal did not divest the district court of jurisdiction to dispose of his remaining claims. See Leonhard v. United States, 633 F.2d 599, 610-11 (2d Cir. 1980), cert. denied, 451 U.S. 908 (1981).

A court may sua sponte dismiss an action for failure to comply with a court order. Haley v. Kansas City Star, 761 F.2d 489, 490 (8th Cir. 1985). Although the

district court gave Moeller an opportunity to amend his complaint, Moeller's numerous responses indicated he did not intend to comply with the court's order. Moeller's attempt to allege a cause of action under 26 U.S.C. § 7422 was also properly dismissed for failure to file his suit within the time requirements set forth in 26 U.S.C. § 6532(a).

Finally, Moeller's allegations of district court bias are based on his disagreement with the district court's rulings in this case and its sua sponte dismissal of his previous suit. Disagreement with a judge, however, is not grounds for recusal. United States v. Grinnell Corp., 384 U.S. 563, 580-83 (1966). Accordingly, the district court did not abuse its discretion in denying Moeller's motion to recuse. See Gilbert v. City of Little Rock, 722 F.2d 1390, 1399 (8th Cir. 1983) (subsequent history omitted).

Accordingly, the district court is affirmed.

A true copy. Attest:

CLERK, U.S. COURT OF APPEALS

EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 88-1782-WA

Walter J. Moeller,	* Appeal from the
	* United States
Appellant,	* District Court
	* for the Western
vs.	* District of
	* Arkansas
United States of America, et al.,	*
	*
	*
Appellees	*

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

March 17, 1989

Order entered at the Direction of the Court;

Robert D. St.Vrain (seal)

Clerk, United States Court of Appeals,

Eighth Circuit.

U.S. District Court

 EXHIBIT Q

Western Dist. Arkansas
F I L E D
July 13, 1989

Chris R. Johnson, Clerk
By
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER
ROUTE 2
WEST FORK, AR 72774
Pro Se

PLAINTIFF

VS.
CIVIL NO. 89-5039

UNITED STATES OF AMERICA

DEFENDANTS

and

JAMES WESTBROOK, Individually
and in his capacity as a public
servant employee of the IRS.

and

WILLIAM F. BARLOW, Individually
and in his capacity as a public
servant employee of the IRS.

and

GUS MCCLANAHAN, Individually
and in his capacity as a public
servant employee of the IRS.

and

EXHIBIT R

UNKNOWN PUBLIC SERVANT EMPLOYEES
OF THE INTERNAL REVENUE SERVICE,
et al, whose names are indicated by the
records of the Internal Revenue
Service, Individually and in their
capacity as employees of the Internal
Revenue Service.

AMENDED COMPLAINT BY ORDER OF THE U.S. DISTRICT COURT TO RECOVER TAXES UNLAWFULLY ASSESSED AND COLLECTED

---

1. Jurisdiction of this court is founded on the United States Constitution Article III, § 2, Amendments I, IV, V, VI, VII, VIII, IX and X, Title 26 U.S.C. §§ 7422, Title 28 U.S.C. §§ 1331, 1340, 1343 and 1346(a)(1), and Title 42 U.S.C. §§ 1985 and 1986 as hereinafter more fully appears.

2. I Walter J. Moeller, Pro se plaintiff for my cause, am a citizen of the State of Arkansas and a resident therein. Defendant is the United States of America. The individual defendants are employees of the Internal Revenue Service.

3. This amended complaint is filed on order of the U.S. District Court, Western

District of Arkansas, Fayetteville Division and dated July 3, 1989. A copy of which is attached hereto as Exhibit J at page 20a.

4. I Walter J. Moeller, Pro se plaintiff bring this action at law as of right under the Constitution of the United States and Title 26 U.S.C. § 7422 and Title 42 U.S.C. §§ 1985 and 1986 with common law jury demanded to decide all issues of law and fact to recover money unlawfully assessed and collected by lien and levy against my army retired pay and my social security benefits by public servant employees of the IRS acting under color of law and in violation of and denial of my constitutional and statutory rights and complains of the unlawfully acts of defendant in the above entitled action and alleges:

FIRST CAUSE OF ACTION

5. During all the times herein mentioned, defendant was engaged in the assessing and collecting of taxes by and

through its employees and was required and compelled to strictly comply with the law, both criminal and civil, and more specifically, as set forth in Title 26 U.S.C. and all rules and regulations pertaining thereto and the Constitution of the United States.

6. Defendant, the United States Government owes me, (Plaintiff pro se), the sum of $15,581.83 for money had and received as a result of unlawful assessment and collecting of taxes for the year 1982 by lien and levy against my army retired pay and my social security benefits which I did not owe and in violation criminal law as well as Title 26 U.S.C. §§ 7422 and 7214 and Federal Tax Regulations 601.101 - 601.106 as hereinafter more fully appears.

7. On June 1, 1983 I filed a Form 1120 S, Sub-Chapter S income tax return for Magma Corporation for the tax year 1982. I am the sole owner of Magma Corporation. This tax return for Magma Corporation was

strictly in accordance with Title 26 U.S.C., and was correct in every respect and attested to by my signature under penalty of perjury.

8. On June 1, 1983 I filed my personal tax return on Form 1040, individual tax return for the tax year 1982. This form 1040 was correct in every respect and was signed under penalty of perjury.

9. I have consistently filed my tax returns strictly in accordance with IRC (26 U.S.C.) for over 40 years.

SECOND CAUSE OF ACTION

10. All of the allegations of the FIRST Cause of Action are incorporated herein in this SECOND Cause of Action as fully set forth.

11. On or about August 15, 1984, I received a hand written note dated August 8, 1984, signed by Jim Westbrook, stating that he had been assigned to audit my tax return for 1982 but that he would be unable to schedule an appointment until the next

month. On September 24, 1984, I received a form letter notice dated September 17, 1984 signed by Mr. Westbrook designating an appointment scheduled for October 3, 1984. As a result of this letter, I forwarded a letter to Mr. Westbrook dated September 28, 1984 in which I requested information concerning the proposed audit. My letter to Mr. Westbrook was never answered.

12. At all times material, Mr. James Westbrook, acting on behalf of defendant, the United States of America, was a public servant employee of the IRS and stated that he had been assigned to audit my tax return and the tax return of Magma Corporation, a sub-chapter S corporation of which I am the sole owner. As an auditor of the IRS, Mr. Westbrook was charged with strict compliance with all the laws and of the Constitution of the United States as required by his oath of office with particular attention to the laws and regulations of the IRS, especially Rule #1

of § 601.106 Federal Tax Regulations.

13. As a direct result of the report made by Mr. Westbrook, acting individually and in concert with other public servant employees of the IRS and in conspiracy caused the "Notice of Deficiency" dated August 9, 1985, and attached hereto as Exhibit A at page 1a to be made and forwarded to me.

14. In spite of my numerous requests I was never supplied with a copy of an audit report or the 30 day letter required by law to be mailed to me. The wilful and negligent refusal of Mr. Westbrook to provide me with a copy of the audit report and the 30 day letter was arbitrary, capricious and abuse of discretion in excess of statutory authority and contrary to my statutory and constitutional rights. The deprivation of my statutory rights violated my right of due process as set forth in Amendment V of the U.S. Constitution for which defendant's acts and

omissions are reviewable by this court.

THIRD CAUSE OF ACTION

15. All of the allegations of the FIRST and SECOND Causes of action are incorporated herein in this THIRD Cause of Action as fully set forth.

16. The next correspondence I received from the IRS concerning my 1982 tax was a certified letter, "Notice of Deficiency" dated August 9, 1985 bearing the signature of Roscoe L. Eggers, Commissioner, by William F. Barlow, District Director. This letter, Notice of Deficiency, totally disregarded the requirements set forth in Title 26 U.S.C. and the Federal Tax Regulations, §§ 601.101 - 601.106 which require specific procedures for conducting an audit and the rights of the taxpayer for administrative appeal. The rights of the taxpayer specified by Federal tax Regulations §§ 601.101 - 601.106 were knowingly and wilfully disregarded by the public servant employees of the IRS. I was

never furnished a copy of the audit report nor the accompanying "30 day letter." as required by law. Thus, I was denied my rights of administrative appeal and was denied my rights under the United States Constitution Amendment I, (the right to petition my government for redress of grievances), Amendment V, (due process) and Amendment IVX, (equal protection of the law).

17. The refusal of Mr. Barlow to provide me with a copy of the audit report and the 30-day letter required to be sent to me under the provisions of Federal Tax Regulations § 601.101 through 601.106 was arbitrary, capricious, an abuse of discretion in excess of statutory authority and contrary to my statutory and constitutional rights.

18. Mr. Barlow denied all the legitimate business expenses and deductions of Magma Corporation which are authorized by law and certain personal deductions. By

denying me my appeal rights, Mr. Barlow deprived me of due process and I was denied the opportunity to present documentary evidence to refute the arbitrary assessment. Due to the great volume of documentary evidence and receipts for expenditures necessary to disprove Mr. Barlow's unlawful assessment, it is impractical to attach these documents. However, the documents will be presented at the trial.

19. At all times material, William F. Barlow was acting on behalf of defendant, the United States of America, and as District Director of the IRS for the area of Arkansas. As such he was responsible for the formation of policy and direction of conduct of his subordinate public servant employees of the IRS and his signature appears on the "Notice of Deficiency" attached hereto as Exhibit A at page 1a dated August 9, 1985 covering my tax year 1982.

20. Mr. Barlow disallowed a deduction of $1000.00 on my personal return for 1982 for my dependant son Timothy, (see Exhibit A paragraph c at page 6a). For documentary evidence to show that Timothy is in fact my dependant son see certificate attached hereto as Exhibit B at page 9a, and birth certificate attached hereto as Exhibit C at page 10a.

21. Mr. Barlow disallowed an authorized deduction for a political contribution for 1982. Documentary proof that I did in fact make these contributions is attached hereto as Exhibit D at page 11a, copy of cancelled checks.

22. Mr. Barlow assessed a negligence penalty of $331.50 for the tax year 1982 quoting IRC section 6653(a) as his authority. (See Exhibit A at page 7a, paragraph 14(a). This section is unconstitutional as applied. A fine or penalty is a criminal sanction and as such comes under the provisions of Amendments

IV, V, and VI of the U.S. Constitution and violated my constitutional rights thereunder. There was no underpayment of tax for the tax year 1982 as stated by Mr. Barlow.

23. Mr. Barlow states in paragraph 14(b) of Exhibit A at page 7a as follows:

> "Substantial understatement - IRC sec. 6661 - 1982. The 10% penalty for substantial understatement of income tax has been asserted for the taxable year(s) ended December 31, 1982 in accordance with Section 6661(a) of the Internal Revenue Code."

This statement by Mr. Barlow is false. The tax return of Magma Corporation for the tax year 1982 was true and correct in every respect and my personal tax return for the year 1982 was true and correct in every respect. Mr. Barlow quotes IRC section 6661 as his authority to assess this penalty of $663.00. A penalty is a criminal sanction and as applied, section 6661 is unconstitutional and violates my constitutional rights under Amendments IV, V, and VI of the U.S. Constitution.

24. The impositions of criminal sanctions was arbitrary, capricious and an abuse of Mr. Barlow's discretion and in excess of his statutory authority and contrary to my statutory and constitutional rights for all of which acts and omissions on the part of Mr. Barlow I am entitled as of right to a review by this court.

25. Mr. Barlow acting individually and in concert and criminal conspiracy with other Internal Revenue employees named herein, acted outside the scope of his discretionary authority when he wilfully and knowingly refused to abide by the audit and administrative appeal procedures in accordance with the Federal tax Regulations, thus denying me my rights secured thereunder.

26. As a direct result of Mr. Barlow's criminal acts, I was deprived of my money by lien and levy for taxes that I did not owe and I am entitled as a right under the provision of Title 26 U.S.C. § 7422 to

recover the money unlawfully assessed and collected.

FOURTH CAUSE OF ACTION

27. All of the allegations of the FIRST, SECOND, and THIRD Causes of Action are incorporated herein in this FOURTH Cause of Action as fully set forth.

28. As a direct result of the unlawful assessments contained in the "Notice of deficiency," (Exhibit A at page 1), a Notice of Federal tax Lien signed by G. McClanahan dated August 6, 1986 was filed for record in the Washington County Arkansas Circuit Clerk's office on August 8, 1986, (see Exhibit E at page 12a) alleged that I owed additional taxes in the amount of $11,502.78 for the year 1982.

29. Mr. McClanahan at all times material hereto, was acting on behalf of defendant, the United States of America, and as a public servant employee of the IRS, and as such, he was charged with strict compliance with all the laws and the

Constitution of the United States as mandated by his oath of office.

30. On August 26, 1986 a levy in the amount of $13,147.30 was placed on my army retired pay for the year 1982 and signed by Gus McClanahan, (see Exhibit F at page 13a). At the same time, a levy was apparently placed on my social security benefits.

31. The Notice of Federal tax lien cites section 6322 of the IRC as authority for the public servant employees to impose a lien. This section is only applicable where it has been established by law in accordance with Federal tax regulation that the person is liable for the tax. I was not liable for this tax. No liability was ever established; therefore the lien is void. Collection of the tax which I did not owe by a void levy against my army retired pay and social security benefits was a taking of property under color of law in violation of Rule 1 Federal Tax

Regulation § 601.106 and Title 26 U.S.C. § 7214.

32. The levy signed by Mr. McClanahan cites section 6334 which limits the extent to which a levy may be executed against property. Paragraph (a)(8) of this section exempts child support payments resulting from a court order. I am required by a court order and property settlement to provide child support for my dependant child in the amount of $300.00 per month. This court order is attached as Exhibit H at page 15a - 17a (1). Paragraph (a)(9) of section 6334 provides for a minimum exemption as provided by subparagraph (d) which exempts certain amounts for individual living expenses. Mr. McClanahan made no provisions for either of these mandatory exemptions. Mr. McClanahan's actions in this regard were arbitrary, capricious and an abuse of discretion in excess of his statutory authority and deprived me of my property under color of

law. This section, 6334 which makes no provisions for a hearing to determine authorized exemptions, is unconstitutional in accordance with the decision in the case of Davis v. Paschell, 640 F Sup. 198 (1986) 8th Cir.

33. The IRS completed their unlawful collection and released the levy on my army retired pay and my social security benefits on June 8, 1987. See attached Form 668-D, Exhibit I at page 19a.

34. On October 1, 1987, I forwarded a letter to Lawrence Gibbs, Commissioner IRS, as required of me under the provisions of Title 26 U.S.C. § 7422 demanding a refund of the money that was unlawfully taken from me under color of law for the tax year 1982 with supporting documents to substantiate my claims for refund. As of this date, my letter demanding a refund has not been answered. On April 28, 1988 I forwarded a tracer letter of inquiry to Mr. Gibbs concerning my letter of October 1, 1987.

This letter has not been answered.

35. As a result of the unlawful acts and denial of my constitutional and statutory rights by defendants I have been deprived of my money in the amount of $15,581.83 under color of law which I did not owe, have suffered irreparable injury by defendant's acts and omissions and will continue to suffer irreparable injury until my money which was unlawfully taken from me and which I did not owe is returned to me.

36. Wherefore I demand judgment against defendant:

1. For actual damages in the amount of $15,581.83 for which I am entitled plus interest as accrued and compounded from the time of the taking.

2. For general damages as authorized by law and whatever the jury shall award.

3. For special damages for cost of typing, copying, transportation, my time and effort and court costs in

connection with the recovery of my stolen money.

4. For punitive damages against the individual defendants as authorized by Title 26 U.S.C. § 7214 and Title 28 U.S.C. § 2679(b)(2) for whatever amount the jury shall decide.

4. For such other or further relief as the court may direct.

Walter J. Moeller (seal)
Route 2
West Fork, AR 72774
(501) 839-2484

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

ARTICLE III is quoted in pertinent parts:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to Controversies to which the United States shall be a party;. . . .

ARTICLE VI is quoted in pertinent parts:

. . . .

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to

the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Text shall ever be required as a Qualification to any Office or public Trust under the Unites States.

AMENDMENT I is quoted in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV is quoted in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V is quoted in pertinent part:

. . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

AMENDMENT VI is quoted in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses

in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII is quoted in pertinent part:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII is quoted in pertinent part:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX is quoted in pertinent part:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X is quoted in pertinent part:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the

States respectively, or to the people.

TITLE 18 U.S.C.

TITLE 18 U.S.C. § 4 is quoted in pertinent part:

MISPRISION OF FELONY

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the Unites States, shall be fined not more than $500 or imprisoned not more than three years, or both.

TITLE 18 U.S.C. § 241 is quoted in pertinent part:

CONSPIRACY AGAINST RIGHTS OF CITIZENS

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of nay right or privilege secured by him by the Constitution or laws of the United States, or because of his having so

exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

TITLE 18 U.S.C. § 242 is quoted in pertinent part:

DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than

are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or life.

TITLE 18 U.S.C. § 872 is quoted in pertinent parts:

EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined not more than $5,000 or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $100, he shall be fined not more than $500 or imprisoned not more than one year, or both.

TITLE 18 U.S.C. § 1001 is quoted in

pertinent parts:

STATEMENTS OF ENTRIES GENERALLY

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or devise a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

TITLE 18 U.S.C. § 1018 is quoted in pertinent parts:

OFFICIAL CERTIFICATES OR WRITINGS

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing,

containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

TITLE 18 U.S.C. § 1621 is quoted in pertinent parts:

Perjury generally

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than

$2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

TITLE 18 U.S.C. § 1622 is quoted in pertinent parts:

SUBORNATION OF PERJURY

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

TITLE 26 U.S.C.

TITLE 26 U.S.C. § 7214 provides in pertinent parts:

OFFENSES BY OFFICERS AND EMPLOYEES OF THE UNITED STATESS:

a. Unlawful acts of revenue officers or agents. - Any officer or employee of the United States acting in connection with any revenue law of the United States -

1. who is guilty of any extortion or willful oppression under color of law; or

2. who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

3. who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

7. who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate return, or statement; or

8. who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5

years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

TITLE 26 U.S.C. § 7422 provides in pertinent part:

CIVIL ACTIONS FOR REFUND.

a. No suit prior to filing claim for refund. - No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been

duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

b. Protest or duress. - Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

TITLE 26 U.S.C. § 7804(b) provides in pertinent parts:

b. PRESERVATION OF EXISTING RIGHTS AND REMEDIES. - Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any

action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the proceeding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

IRS PROCEDURE AND ADMINISTRATION

RULES AND REGULATIONS

§ 301

-101-

SECTION 301.6203-1 Method of assessment. . If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

IRS ADMINISTRATIVE PROCEDURE

SUBCHAPTER H - INTERNAL REVENUE PRACTICE

PART 601 - STATEMENT OF PROCEDURAL RULES

SECTION 601.101 Introduction

(b) Scope. This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statements 26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules.

SECTION 601.102(a)(3)

Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

SECTION 601.103(c) Disputed liability - (1) The taxpayer is given an opportunity to request that the case be considered by an Appeals Office provided that office has jurisdiction (§ 601.106(a)(3). If the taxpayer requests such consideration, the

case will be referred to the Appeals Office, which will afford the taxpayer the opportunity for a conference. The determination of tax liability by the Appeals Office is final insofar as the taxpayer's appeal rights within the Service are concerned.

SECTION 601.105(b)(4) - Conclusion of examination

At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights.

SECTION 601.105(b)(5)(viii)(c)(2)(i) Field examination.

If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. . . . Following such review, the taxpayer will be

sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

SECTION 601.105 (b)(5)(viii)(d)(1)(iv)

. . . .In an unagreed case, the district director sends to the taxpayer a preliminary or "30-day letter" . . . .The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. . . . The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination.

SECTION 601.106(b) Appeals function. Initiation of proceedings before Appeals.

In any case in which the district director

has issued a preliminary or "30-day letter" and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of §§ 601.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization.

SECTION 601.106(f)(1) Rule I

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative is his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty

to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

TITLE 28 U.S.C.

SECTION 144 Bias or prejudice of judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceedings.

SECTION 453 Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal

rights to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

SECTION 455 Disqualification of justice, judge or magistrate.

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned.

SECTION 1254(1) Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or degree.

Section 1291 Final decisions of district

courts.

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

SECTION 1331 Federal Question.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

SECTION 1340 Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports on tonnage except matters within the

jurisdiction of the Court of International Trade.

SECTION 1343 Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

SECTION 1346 United States as defendant

(a) the district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(1) Any civil action against the United

States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

SECTION 1652 State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the Unites States, in cases where they apply.

SECTION 1653 Amendment of pleadings to show jurisdiction.

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

SECTION 1654 Appearance personally or be

counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

SECTION 2072 Rules of civil procedure

. . . .

Such rules shall not abridge, enlarge or modify any substantive right.

SECTION 2679. EXCLUSIVENESS OF REMEDY.

(a). . . .

(b)(1) . .

(b)(2)Paragraph (1) does not extend or apply to a civil action against an employee of the Government -

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

TITLE 42 U.S.C.

SECTION 1985 Conspiracy to interfere with civil rights

. . . .

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law, ...in any case of conspiracy set forth in this section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of

damages, occasioned by such injury or deprivation, against any one or more of the conspirators

SECTION 1986 Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS Section 1985, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages causes by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and

neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.